Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, APRIL 18, 1959
Vol. CXXIII No. 16 PAGES 244–259
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange)
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 9*d.* (including Reports), 1*s.* 9*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

No Offence

The *Manchester Guardian* of March 24 contained an interesting account of a case which, it is suggested, illustrates obsolete law relating to larceny.

Two unemployed men, who were alleged to have been seen hewing coal from a seam at an opencast colliery and carrying it away, were charged with stealing coal from a mine. Counsel for the prosecution informed the magistrates at Brierley Hill that since the charges were formulated it had become clear that the law did not regard opencast working as a mine and he asked for the charges to be dismissed. Alternative charges of simple larceny were preferred, but as to these counsel said that the men obtained the coal by severing it from the realty and that therefore there was no offence under the Larceny Act. The seam of coal had been exposed by quarrying operations. The owners could take civil proceedings to recover the value of the coal, or to prevent trespass, or to seek an injunction against a persistent offender.

Dismissing the charges, the chairman referred to the point as an oversight in the law due to the passage of time and changing conditions.

Counsel also stated that if the owner or one of his employees had cut the coal from the seam and it was lying on the ground when the men took it, it would have been a clear case of larceny.

Severance from the Realty

In s. 1 (3) (*a*) of the Larceny Act, 1916, it is provided that anything attached to, or forming part of the realty (subject to exceptions) shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof. This was not new law, and as long ago as 1871 it was held in *R.* v. *Townley* (1871) 35 J.P. 709 that mere severance at one time and taking away at another are not sufficient, unless in the interval the person intended to abandon his wrongful possession of the article severed.

This is the kind of distinction that the man in the street finds unintelligible. In the same way, he cannot understand why, as also provided in the Larceny Act, the carcase of a creature wild by nature and not reduced into possession while living, is not to be capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcase.

So far as the Brierley case is concerned, it would appear that the prosecution was satisfied that open cast coal, to which counsel applied the word "quarried," could not be described as stolen or severed from a mine, so as to bring the facts within the provisions of s. 11 of the Larceny Act, 1916. The *Manchester Guardian* report states that the Director of Public Prosecutions was to be informed of the need for an alteration of the law.

Evidence of Confessions

In *R.* v. *Smith* (*The Times*, March 25) the Courts-Martial Appeal Court dismissed an appeal against a conviction of murder. One of the points involved was whether two confessions alleged to have been made by the appellant were rightly admitted in evidence.

The Lord Chief Justice said that a sergeant-major hearing that there had been stabbing, paraded a company, and said that whoever had done it must step forward, and he would keep the men there until he had got to the bottom of it. No one stepped forward, and the sergeant-major then questioned each man. The appellant said he had been in bed, but after the sergeant-major had indicated that he would stay there till he found out about the fighting, the appellant said "I did the stabbing."

Lord Parker said the Court was quite clear that the appellant's statement was not admissible at the trial, although there was nothing improper in the action of the sergeant-major. What was said by the sergeant-major amounted to a threat or inducement. Lord Parker went on to refer to the visit next morning of a detective

sergeant, who cautioned the appellant, referred to what had happened the night before and to the admission to the sergeant-major that he had stabbed three men. The appellant then made an admission of stabbing three men. After signing a written caution he made a statement again admitting the stabbing. The Court thought that the principle to be deduced from the cases was that if the threat or promise under which the first statement was made persisted then the second statement was inadmissible. In this case however, it was quite clear that the effect of any original inducement or threat under which the first statement was made had been dissipated. On those grounds the Court accordingly had come to the conclusion that the oral and written statements made to the sergeant were clearly admissible.

"The most dangerous man on the road"

Dr. A. L. Goodhart, Q.C. is reported in the *Manchester Guardian* of March 23 to have said recently at a conference on road safety that the most dangerous man on the road is the skilled driver who is prepared to take a risk. He added "He has got away with it safely 999 times so he is ready to chance it on the 1,000th occasion."

We agree whole heartedly that a skilled driver who takes a risk is a potential danger on the roads but we should like to hear the argument in support of the claim that he is the most dangerous man on the road. The danger arises from the taking of a risk and is there whether the risk be taken by a pedestrian, a cyclist or a vehicle driver. Other things being equal it would appear that the greater the skill of the person taking the risk the less likely is the potential danger to become an actual danger. The agile quick-witted pedestrian taking a risk is more likely to escape unscathed than the less nimble slow-witted one, and so on. It may be that the force of Dr. Goodhart's argument is that the skilled driver, because of his skill, is inclined to take the risk more often and is encouraged by success to repeat his offence, but it can also be argued that what is a risk with an incompetent driver is not necessarily a risk with a competent one.

At the same meeting Mr. J. P. Eddy, Q.C., said that co-operation between all sections of the community, police, motorists and pedestrians, was the real way to stop the toll of casualties. This is a point of view we have argued more than once in this journal and we still hold it quite firmly. The courts, perhaps unfortunately, can deal with the non-co-operators only when they are motorists; the sanctions against the offending pedestrian are negligible. This, however, is no reason why the offending motorist should not be adequately dealt with and we agree with the decision of the conference that more frequent disqualification for serious offences would help to save life and prevent suffering on the roads.

Oxford Roads

It is a couple of years since much was to be found in national newspapers about the Oxford roads. The position then was that controversy had come to a head about a proposed road through Christchurch Meadow. This naturally aroused bitter opposition. We ourselves, although we thought that it was the most hopeful plan, never minimized the objections to running a fast traffic artery across the Meadow. We suggested ways and means by which the objections could be reduced, although there is no doubt that any mitigations of this sort would add enormously to the expense. Everything came to a stop two years ago, when a proposal was made to conduct a traffic census, and we gather from a statement in *The Times* that the city council early in March was still waiting for the result of a census ordered in 1957. This seems strange, but there may be some explanation which will come out at the next council meeting. Meantime a proposal has been put forward for spending more than a quarter of a million pounds upon a bridge to link the Iffley Road with the Abingdon Road, by a bridge across the Thames lower than the mouth of the Cherwell. This seems a good idea, in that it would enable traffic from the direction of London, and from the industrial suburb of Cowley, to reach the main road running southward from Oxford, and also to go on from there, if desired, into North Oxford or to turn towards the west of Oxford without passing through High Street. With modern motor traffic the increased distance would not be important. At Durham, for example, where on a smaller scale the conditions are rather similar to those at Oxford, there is a road sweeping round the city which is taken as a matter of course by fast traffic, except that which is obliged to go into the city, because drivers recognize that a mile or two added to their journey is as nothing compared with the delays and inconvenience, and it may be dangers, of passing through the middle of the city. It was stated in *The Times* that opposition to this scheme at Oxford was likely, upon the ground that its adoption would prejudice the chances of the scheme for driving a road through Christchurch Meadow. It is possible that the Meadow road would take more traffic away from the High Street than would a road cutting across from Iffley Road, well outside the city, but this seems no reason why the latter project should not be adopted in the meantime. Every little helps, and it might even be found that by some rearrangement of roads on the eastern side of the River Cherwell it would be possible to take over the new bridge instead of over Magdalen Bridge a larger proportion of the traffic than is foreseen at present. Oxford is so important from every point of view that nobody in his senses would say that it is better to do something than nothing, but it is also a place where it is essential that something shall be done. If a new bridge can be provided well outside the parts of the city which have special historical and architectural value, even if that bridge does not do everything that is hoped towards relieving congestion in the city itself, it will have been worth while. It will still be essential that attention be directed to major remedies and, in the last resort, that means shall be found of relieving the High Street (in particular) of heavy traffic. While this Note was being printed, another meeting of the council was held, and decided not to proceed with the link between Iffley Road and Abingdon Road. So the world still waits for the council to act.

Exemplary Sentences

At the recent Kent Assizes there were several instances, reported in the *Kent Messenger*, where crimes of violence committed by young men were visited with sentences of imprisonment.

In one case two naval ratings aged 17 who pleaded guilty to being armed with an offensive weapon and assault with intent to rob were sent to prison each for 18 months. It was stated that they followed a man and hit him with a milk bottle. Austen Jones, J., in passing sentence said he would have passed a heavier sentence but for their age.

A similar sentence was passed on another naval rating aged 19 for wounding another man with a broken glass.

Two other young men aged 18 and 21 respectively who pleaded guilty to robbery with violence were stated to have attacked an elderly woman shopkeeper when she was alone in her shop. They were sentenced to two years' and 18 months' imprisonment respectively. Passing sentence Austen Jones, J., said that no court desired to send young men to prison but in his view when two young men entered the shop of a lady of 68 and used violence on her and stole everything that was in her till there was no other way of dealing with them appropriately than by a sentence of imprisonment, and he added "There are so many offences of this kind committed at this time by young men, and so many cases of violence at this Assize where the accused person is under 21." In deciding upon the length of sentence he took into consideration the fact that they were still young.

Protecting the Consumer

In the House of Commons on March 20, speaking in a debate initiated by Mr. Willey, calling attention to the need for further safeguarding the consumer, the Parliamentary Secretary to the Board of Trade stated that the Government intended to set up a committee to consider the whole question of consumer protection.

It has been suggested on many occasions, particularly in the reports of weights and measures' inspectors, that legislation to amend the Weights and Measures Acts and provide further safeguards to the purchasing public is long overdue. It is to be hoped that the labours of the new committee will lead to such legislation.

Probation Officers and Matrimonial Cases

Most annual reports of probation officers contain particulars of matrimonial cases, either referred to them by the court or by other means, or coming to their notice through the direct approach of one of the parties. Not infrequently it is suggested that probation work proper may suffer to some extent because of the great amount of time, thought and attention involved in this difficult type of work.

In the report of Mr. Basil Davies, principle probation officer for the city of Sheffield, there is the usual statement that matrimonial work continues at a more or less constant level, but it appears that the policy adopted in Sheffield lightens the burden so far as the probation officers are concerned.

Probation officers in the main take those cases which are adjourned by the magistrates either at the applications court or at the domestic proceedings court. They also take on cases at the request of solicitors and at the request of officials in other departments, but as far as possible do not attempt matrimonial reconciliation with many who just drift into the office seeking help. These they pass, if possible, either to the Marriage Guidance Council or to the Police Court Mission. The fact that these two bodies exist does relieve the probation officers of a considerable amount of pressure. The amount of time that one can spend on a matrimonial case, says Mr. Davies is almost limitless and, bearing in mind all the other duties that probation officers have, a line must be drawn somewhere.

This question of matrimonial work is one which will no doubt be considered as part of the inquiry into the working of the probation system.

Town and Village Libraries

In 1957 the Minister of Education appointed a committee under the chairmanship of Sir Sidney Roberts, formerly Master of Pembroke College, Cambridge, to consider the existing position of the library service in England and Wales. The committee's report was presented early this year and was laid before Parliament in February. It is available to the public at the price of 3*s.* 6*d.*, which is lower than is usually charged at the present day for government publications of this kind. The duty of the committee was to consider the structure of the public library service and to advise what changes, if any, should be made in the administrative arrangements, regard being had to the relation of public libraries to other libraries. The report has had a mixed reception. Outside local government circles it has not up to the present attracted much notice. Among local authorities, the reactions are what might have been expected: that is to say, the larger local authorities see a chance of getting something further into their own hands, while the smaller local authorities see no particular reason for a change.

It is significant of the attitude adopted by the committee itself that they consider it to be a strange relic of 19th century legislation that there should be 17 parish councils, still exercising the right to provide their own independent library service. For ourselves, we should have thought this an excellent feature, which might well be extended. What can be better for a village or rural parish than to have its own library, provided by its own parish council and designed primarily for the needs of the villagers? Obviously the village library will not be able to provide a great variety of costly books, but there will not as a rule be a great demand for these. In so far as there was a demand, it could be met by leaving the village library in existence and arranging for its being supplemented from the county library. In practice in many villages at the present day there are branches of a county library. It may make little difference, or seem to make little difference, whether the library is provided by the county council or by the parish council with the assistance of the county council, when it is desired to obtain a book which the parish cannot obtain for itself. Spiritually, however, there is a difference: there is great value in having the library as the property of the parish itself. It is one of the earliest of the services which parish councils were able to provide, and we think it is still one of the most helpful.

The publication of the committee's report was immediately followed by a letter in *The Times*, signed by the mayors of several non-county boroughs, protesting against the characteristic tendency to transfer powers of such local authorities to the county councils. The committee, it is true, recommended that in a large non-county borough which was prepared to spend a great deal of money a claim could be made to the Minister of Education to be allowed to retain the library in its own hands. We do not think this is good enough. We are not shocked to find that there are 484 separate library authorities, a quarter of them in areas with less than 20,000 population. We are not shocked to find that there are 21 boroughs or urban districts with populations exceeding 50,000 served by county councils, and not able to run their own service or not willing to do so. If the inhabitants of a particular area do not want a local library, let them leave it to the county council. So again, if the local authority (being a library authority) is niggardly why not leave this to the electors of the district to put right? Some library authorities, we are told, are spending as little as 6*d.* a head of population upon new books, whilst others are spending more than five times as much. This is the sort of thing which is best left to the local government electors

to determine for themselves: it is the sort of thing which could be made an issue in local discussions and in local politics. We see no reason to substitute county councils for local authorities as library authorities, merely because the local library authority has, with the acquiescence of its electorate, run the service economically or even been niggardly in spending. This might be left as a local matter. The committee suggests that no local authority should be regarded as providing an efficient library service unless it spends at least £5,000 a year on the purchase of books, or 2*s.* per head of population, whichever is the greater—unless this is done their independent status, say the committee, should not be left to them.

This is altogether too mechanical a view. The cost of books incurred in a particular area ought to depend upon the nature of the area and the wishes of the inhabitants—provided always that there are facilities by linking libraries for a minority, even a small minority, to get books from elsewhere if it so desires. The general trend of the committee's observations seems to be that they regard the library as a part of the educational service, and indeed the transfers of function in recent years between government departments, and the fact that the committee itself was appointed by the Minister of Education, lend colour to this view. We should agree that it is important in the interests of the library and in the interests of schools that there should be a close link. The public libraries can be used, and are used at present in many towns, as a means of providing older school children and college students with works which cannot reasonably be expected to be placed in the school libraries, and it is a hopeful sign that in many a provincial library you can see children from the local grammar school or secondary school reading (and it may be writing) in the library. It is entirely proper for the library to go on helping persons, who are receiving scientific and technological training, with books which are often expensive, and it is even more important that the decreasing number of persons who are interested in humane letters should be able to obtain help from public libraries. This does not, however, mean that the library should be regarded as a adjunct of the public system of education. The two things are historically and logically distinct; we would keep the library service autonomous in its relation to the educational service.

The committee suggests that there should be an improvement in the scale of remuneration of library staffs with a view to attracting a larger number of qualified persons into the service of library authorities, and encouraging, young people to train themselves for that service. Obviously these are most desirable purposes, but highly paid staff is not the whole of life. Nor are modern buildings. The committee remark on the fact that the premises of many libraries are old-fashioned and even out of date. This again, like the number of books provided and the type of books, is a matter which could surely be left to local option. If the ratepayers of a district find their library inconvenient, they have it in their power to bring pressure to bear on the library authority to spend more money. The whole report of the committee seems to us to be instinct with the idea that a local community, which does not want something better than it has, ought to be obliged to have it—possibly and even preferably by the expedient of bringing in some larger authority to tell it what is best. This is a negation of local government and, in effect, another means of imposing a bureaucracy on local people, even if the bureaucracy is that of the county council working through county officials and supervising local branches of the county library. If the local people already have a library which satisfies their conscious wants, why should the county council obtain a transfer of the powers, and provide those local people with something which they do not want? We are all in favour of making provision for helping people who want something better than they have already, but this can be done by liaison with other libraries, and by the normal processes of local argument, without removing the control of the library from local people.

AUTHORITY FOR PROSECUTING

We have been asked whether we can supply a list of statutory provisions which prevent the laying of an information, without the consent of some persons other than the actual informant.

An instance which will occur promptly to most of our readers is to be found in s. 298 of the Public Health Act, 1936, and the corresponding s. 253 of the Public Health Act, 1875, which remains in force and applicable to prosecutions under the surviving provisions of that Act and Acts incorporated with it: *see Oberst* v. *Coombs* (1955) 119 J.P.N. 179. It is not often that a prosecution under the Public Health Acts goes wrong upon the ground that the necessary authority to prosecute has not been given, but there are some complications. Thus in *Lawrence* v. *Martin* (1928) 92 J.P. 112, the clerk of an urban district council, who had in fact received the council's authority to prosecute, was held to be entitled to do so in his own name, and to enter into a recognizance as a principal, but where the clerk has laid the information in the council's name he cannot enter into a recognizance in his own name: *Leyton Urban District Council* v. *Wilkinson* (1927) 91 J.P. 64. It is suggested by *Lumley* that *Lawrence* v. *Martin*, decided upon the Public Health Act, 1875, cannot be relied on since the passing of s. 277 of the Act of 1933.

In a different field we have lately received several queries about those provisions of the Acts relating to excise duties which are now administered by local authorities. It has for obvious reasons of convenience been customary to employ the police upon work connected with excise duties, and several of the questions put to us have arisen when an offence was discovered by the police, and it was contemplated that a police officer would lay the information. It has happened when this has been done that no objection has been raised by the defence or that the question raised has been taken to be settled by the decision in *Jones* v. *Wilson* (1918) 82 J.P. 277, to which we referred in an article at p. 4, *ante*, and in our answer to P.P. 1 at p. 31, *ante*. It has since been suggested to us that the first branch of this answer should be reconsidered.

The doubt arises from the enactment in s. 21 of the Inland Revenue Regulation Act, 1890, that an information must be laid in the name of an officer, which then meant an officer of the Inland Revenue. By s. 39 of the same Act, duties of excise are brought within its scope. Section 21 of the Finance Act, 1908, transferred the collection of the duties of excise about which the present question arises to the councils of counties and county boroughs—as also the duty on male servants, which was in question in *Jones* v. *Wilson*, *supra*, but

has since been abolished. An Order in Council, S.R. & O. 1908, No. 894, was made giving effect to this transfer, and art. 9 of that order empowered councils to delegate to officers, who were thereupon to have the powers and be subject to the liabilities of officers of the Inland Revenue.

In *Jones* v. *Wilson, supra,* on which we relied for the relevant part of our above-mentioned answer at p. 31, the council of a county borough had delegated its power to the watch committee, and no question arose about this. The watch committee naturally used the borough police, but no specific authority had been given to any officer to lay the information. Since in fact the necessary authority had not been given to anybody, the point now made did not strictly arise there, but it should be noticed that the court apparently had no qualms about it. If the police inspector who had laid the information had been specifically authorized the court would have agreed that this was enough. It may even be (although this also did not have to be decided) that if the police inspector had stated in writing on the face of the information that he held a particular position, and had been duly authorized, the court would not in 1918 have gone behind the statement. That this was so was suggested in argument, on the supposed authority of *Dyer* v. *Tulley* (1894) 58 J.P. 656. Moreover, *Fisher* v. *Oldham Corp.* (1930) 94 J.P. 132 had not then been decided, so that it would have been easier than it would be today to argue that a constable was an officer of the council, when appointed a constable by the watch committee of a county borough having its own police force, as was Merthyr Tydfil where the issue in *Jones* v. *Wilson* arose. This aspect of the problem is not touched by *Oberst* v. *Coombs, supra,* where the local authority which had the right to prosecute was not the police authority. Looking again at art. 9 of the Order in Council of 1908, we are inclined to agree that *Jones* v. *Wilson* cannot be relied upon as an authority for holding that the police can act in excise cases if properly authorized, which involves the conclusion that our answer at p. 31 may, to this extent, have been misleading. In *Bowyer* v. *Mather* (1919) 83 J.P. 50, where the point decided was that authority under s. 259 of the Public Health Act, 1875, to lay an information could not be given to an officer who had already laid the information, Avory, J., quoted what was said in *St. Leonard's Vestry* v. *Holmes* (1885) 50 J.P. 132, that it "is important that the (vestry) should exercise a discretion in each case." This is something we have stressed ourselves, for example at 116 J.P.N. 185 and 375 (the final paragraph at each place), as regards cases where the laying of an information requires consent or authorization from some person other than the informant, and it was because of this that we welcomed what the court said in *Price* v. *Humphreys* (1958) 122 J.P. 423; [1958] 2 All E.R. 725, to the effect that the justices or their clerk ought to make sure whether any necessary consent had been obtained at the stage of issuing the summons, since otherwise the point might not be taken (especially by a poor defendant not professionally represented), while if it was first taken before the magistrates on the hearing there was likely to be delay and inconvenience, at least. We recognize that the obligation on the magistrates' clerk may be burdensome, and we think it regrettable that Parliament has never co-ordinated the statutory provisions in this sense; the office of the Parliamentary Counsel possesses facilities for such a task which are not available to us or to anybody else. As the law stands, it seems that the only safe course for a magistrates' clerk is to verify the point for himself in every case—though we did our best to help him at 116 J.P.N. 183 and 355.

His task may be simplified in many cases by s. 277 of the Local Government Act, 1933, as applied in *James* v. *Stein* (1946) 110 J.P. 279, where the person who lays the information is a local government officer, although we have said in earlier articles, already mentioned, that we think it undesirable for a local authority to go, in practice, as far as that decision may be thought to enable them to go. Moreover, it does not necessarily follow from that section that the local authority cannot grant express authority to a person who is not their own officer, where the governing statute itself contains no similiar limitation. Where s. 277 is relied on, the information must be in a local authority's name: *Leyton U.D.C.* v. *Wilkinson, supra.* These cases are therefore the converse of those above mentioned, relating to excise offences. It should also be mentioned, lest we be thought to have overlooked the point, that a local government officer, equally with his employing authority and with any other person, including a police officer, can lay an information in his own name for breach of a statute unless the statute has limited his right. For example, in *R.* v. *Stewart* (1896) a local government officer in his own name had prosecuted an offence under the Diseases of Animals Acts, and in *Snodgrass* v. *Topping* (1952) 116 J.P. 332 under s. 8 of the Food and Drugs Act, 1938. Some problems about payment of costs in such a case were indicated at 116 J.P.N. 185 and 357.

ANOMALIES OF FINES AND IMPRISONMENT

[CONTRIBUTED]

This article starts off on a rather irrelevant note, but perhaps on second thoughts, maybe not. The Income Tax Act, 1952, s. 505, provides that if any person, for the purpose of obtaining any allowance, reduction, rebate or repayment in respect of income tax, either for himself or for any other person, or in any return made with reference to income tax, knowingly makes a false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months. But have things really got so out of hand that an offender cannot, as the saying goes, "Get away with paying" if the court has a mind to allow him?

Since 1879 (s. 4 of the Summary Jurisdiction Act, 1879—now s. 27 (3) and s. 5 of the Magistrates' Courts Acts of 1952 and 1957 respectively) there has been a provision that, with a few exceptions, where a court of summary jurisdiction has authority under an Act of Parliament to impose imprisonment for an offence punishable on summary conviction but has no authority to impose a fine for that offence, the court may, if it thinks the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding £25. But there is a provision that the amount of the fine is not to subject the offender in default of payment to a greater term of imprisonment than that to which he is liable on conviction. It follows, therefore, that for a contravention of s. 505 of the Income Tax Act, 1952, an offender might be fined; but the further question is how much . . . £10, £20, £30 . . . at the whim of the court, or what?

A few years ago (*Lowther* v. *Smith* (1949) 113 J.P. 297) a seaman was charged before a court of summary jurisdiction

with wilfully disobeying a lawful command during his engagement to serve on a fishing boat. This is a contravention of s. 376 (1) of the Merchant Shipping Act, 1894, for which a period of imprisonment not exceeding four weeks and forfeiture of two days' wages is provided. The offender was sentenced to 14 days' imprisonment, and against this sentence he appealed to quarter sessions. It was there concluded that a fine would be more appropriate than imprisonment, and although it was thought that a fine of £10 would have been proper the learned recorder felt that the maximum he could lawfully impose was £1. Apparently he had in mind the provisions of s. 5 of the Summary Jurisdiction Act, 1879 (now sch. 3, Magistrates' Courts Act, 1952), which sets out a scale of imprisonment for non-payment of money adjudged to be paid on conviction, that is to say, where the sum adjudged to be paid does not exceed 10*s*., a maximum period of seven days' imprisonment; exceeding 10*s*. but not exceeding £1—14 days; exceeding £1 but not exceeding £5—one month; exceeding £5 but not exceeding £20—three months: so in fixing the fine of £1 the learned recorder applied the scale in reverse, that is to say, maximum imprisonment not exceeding four weeks (which is less than a calendar month—*see* s. 3, Interpretation Act, 1889) a fine of £1 as a maximum.

For the appellant it was contended that by virtue of the words " impose a fine not exceeding £25 " in s. 4 of the 1889 Act, the court could have imposed a fine up to this amount, provided the term of imprisonment fixed in default did not exceed the period of four weeks mentioned in s. 376 (1) of the 1894 Act. But Lord Goddard, C.J., did not agree. " If it had not been for the words *and not being such an amount as will subject the offender under the provisions of this Act . . . to any greater term of imprisonment* I think counsel's argument would be sound, but it seems to me that those words clearly indicate that Parliament intended that the fine should be measured by the term of imprisonment which the Act under which the offender was prosecuted authorized, that is to say, if the Act provides that a man shall be liable to three months' imprisonment, he can be fined £25, and if it provides that he can be sent to prison for one month, he can be fined up to £5. If, however, the Act provides, as it does in this case, that the penalty of imprisonment is less than a calendar month, the statute, in my judgment, specifies £1 as the maximum fine which can be imposed. That is the only sensible interpretation that can be given to ss. 4 and 5 of the Act of 1879. They are not intended to leave to justices the unfettered discretion to impose any fine they like so long as it does not exceed £25. In fixing a monetary penalty they must have regard to the length of the imprisonment which is authorized by the Act under which the defendant is convicted. It must be assumed that Parliament considered that a fine of £1 and imprisonment for, *e.g.*, 14 days, are almost interchangeable terms, and it follows that, if a person can only be sentenced to a period of less than a calendar month, the appropriate fine is £1. If the statute had intended to provide otherwise the words " not being such amount " would not have been included. The statute would have provided that the fine should not exceed £25 and that offenders should not be sentenced in default to a longer term of imprisonment than the Act which authorized the imprisonment provided." In all such cases, therefore, where there is power to mitigate, the fine which may be imposed is to be measured by reference to the term of imprisonment specified in sch. 3 of the Magistrates' Courts Act, 1952, and in the case of an offence against s. 505 of the Income Tax Act, 1952, this will be a maximum of £25. But if a person is fined, can he in default of payment be sent to prison for a term exceeding that which he might have been sentenced to on conviction ?

On January 16, 1893, two street musicians were charged and convicted for not departing when requested to do so by a householder. The statute under which they were charged gave the magistrate the option of either fining them up to a maximum of 40*s*. or sending them to prison for *three* days, but nevertheless in fining each defendant the magistrates ordered that in default they should be imprisoned for *one calendar month*. Naturally, it was pointed out that the section of the statute under which the defendants were charged provided for only three days' imprisonment as an alternative to the fine, but this was of no avail. One defendant paid but the other refused to do so, and an order *nisi* of *certiorari* was obtained. In support, it was contended that only two alternatives were open to the court, either to imprison for three days, or to impose a fine not exceeding 40*s*., and that a contrary contention would be tantamount to giving a third; the third being that if the defendant did not pay the sum ordered he would be imprisoned for one month. It was obvious, so it was argued, that the legislature must have intended the maximum term of imprisonment to be three days, and whether the fine was paid or not paid the length of imprisonment must not exceed the three days.

In discharging the rule, the court held that the limit of three days did not apply to a term of imprisonment in default of paying a penalty, and that although it was an anomaly there was nothing wrong with the conviction.

That was in 1893 (*R.* v. *Hopkins* (1893) 57 J.P. 152) and some 20 years later the point was again before the Divisional Court in *R.* v. *Leach and Another; ex parte Fritchley* (1913) 77 J.P. 255. Fritchley was convicted of three offences of selling beer without a licence at a so-called club of which he was steward. For each offence he was fined £25 and ordered to pay costs, and in default of payment and sufficient distress, he was ordered to be imprisoned for three months. The first two periods of imprisonment were to run consecutive, and the third sentence of three months was to run concurrently with the other two; the result being that if he did not pay and there was insufficient distress, he would be imprisoned for six months. Again the irony of the matter was that under the then Licensing (Consolidation) Act, 1910, s. 65, the defendant was liable only to a fine not exceeding £50 or to imprisonment not exceeding *one* month for each such offence. In discharging the rule *nisi* to show cause why a writ of *certiorari* should not issue the court held that the justices were not limited, in ordering imprisonment, in default of payment and insufficient distress, to the period of one month as prescribed by s. 65 of the 1910 Act, and had power to impose in respect of such default, imprisonment on the scale set out in s. 5 of the Summary Jurisdiction Act, 1879 (now sch. 3 to the Magistrates' Courts Act, 1952). Darling, J., commented, " The argument used by the court in that case (*R.* v. *Hopkins, supra*) applies to the present case, as also do the observations of Lord Coleridge, C.J., that although it is a great anomaly that a man may be sent to prison for a longer period if he is merely fined for an offence than he would be if he in the first instance receives a sentence of imprisonment for the offence itself, it is an anomaly which Parliament, and not the courts, can be called upon to solve. That was said in 1893, and 17 years after that date—namely in 1910—Parliament, when it might have altered the law deliberately re-enacted it in the same form as that in which it was at the date when the decision of *R.* v. *Hopkins, supra*, was given."

Even recent legislation has not been freed of this anomaly. For instance, for selling intoxicating liquor without a licence, s. 120 of the Licensing Act, 1953, provides that on a first conviction a person shall be liable to a fine not exceeding £50 or to imprisonment for a term not exceeding one month. But if a person were fined £50 he might, in default, be committed to prison for *three* months having regard to the scale laid down in sch. 3 to the Magistrates' Courts Act, 1952. To prevent a great deal of injustice in these cases, courts would do well to bear in mind the further words of Lord Goddard, C.J. in *Lowther* v. *Smith, supra,* "No doubt that scale of imprisonment could be reduced, that is to say, if the court imposes a fine of, *e.g.*, £2 it does not follow that the court is bound to send the defendant to prison for one month in default." In other words, although a person may be liable to imprisonment according to the scale laid down in sch. 3 to the Magistrates' Courts Act, 1952, it is not obligatory on the courts to impose the appropriate maximum term therein specified.

The last point is this: If a statute provides for a period of imprisonment *plus* a fine, and the maximum period of imprisonment plus a fine is imposed, can the court specify a further term of imprisonment in default, thus making in effect an additional term of imprisonment beyond the maximum prescribed by the statute? This was the point raised in *R.* v. *Carver* (1955) 119 J.P. 204. The appellant was convicted at quarter sessions for permitting premises to be used as a brothel after a previous conviction for a like offence. The court looked upon the case as a bad one and imposed the sentence of six months' imprisonment and also fined the defendant £200. They also provided that if the fine was not paid the appellant would have to serve a further six months, making 12 months in all. On appeal it was contended that such a sentence is not authorized by law, because Parliament has provided a maximum sentence of six months for the offence, and no further sentence of imprisonment could be authorized. However, the court took the view that as the statute had imposed a sentence of six months plus a fine, it obviously did not mean that a person with no money was to be in a better position than a person who could afford to pay. "In *R.* v. *Brook* (1949) 113 J.P. 219, by which we are bound," said Lord Goddard, C.J., "this court said that an entirely new procedure was introduced by the Criminal Justice Act, 1948, with regard to the payment of fines . . . the maximum sentence that can be imposed by a court of summary jurisdiction is three months for non-payment of a fine, but it has always been the policy of the legislature, certainly when the proceedings are before magistrates' courts to deal with the question of non-payment of fines by a sentence of imprisonment. A considerable change was introduced into the law by the Criminal Justice Act, 1948, s. 14 (1) of which is not limited to cases where a fine but no sentence of imprisonment is imposed. It provides: "Where a fine is imposed by . . . a court of assize or quarter sessions, an order may be made . . . (*c*) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered. In these circumstances we think quarter sessions were entitled to make the order they did. If the Sheriff distrains on the goods while the woman is serving her sentence and recovers the sum of £200 by distraint, when her sentence of six months is up that will be the end of it, but if distraint does not produce the £200 or the fine is not paid she will have to serve a further six months."

It is of interest to note that any term of imprisonment imposed by courts of assize or quarter sessions under s. 14 (1) of the Criminal Justice Act, 1948, in default of payment of a fine shall not exceed 12 months.

"NAP"

THE HEALTH OF THE SCHOOL CHILD

The report of Sir John Charles, as chief medical officer of the Ministry of Education, for the years 1956 and 1957, contains a most interesting account of the development of the school health service since it was started in 1908—which was then known as the school medical service. It is encouraging, but not surprising, to be told in the report that, contrasted with children of 50 years ago the boys and girls of to-day are of better physique, are well clad and shod, and are cleaner, and their expectation of life at birth is 20 years longer. Diseases that once killed or disabled thousands of children have been overcome, whilst the ravages of others have been restricted. Children everywhere are taller and heavier than their predecessors of 50 years ago; they reach physical maturity earlier. In some of the poorer districts boys and girls are still lighter than their fellows in well-to-do areas, but they are considerably heavier than those of earlier generations. There has been a massive reduction since 1861, and especially since 1910, in the death rates of children from the more common infectious diseases, other than poliomyelitis.

School meals have undoubtedly been a contributory cause in this general improvement. In the early years of the century charitable organizations provided meals for a small number of children. In 1906, the Education (Provision of Meals) Act, gave local education authorities power to provide meals free, or at a reduced price, to necessitous children, and so there was established the principle that arrangements for the provision of school meals were an integral part of the education system. The number of children fed in school rose to almost half a million during the first year of the 1914–18 war, but fell to under 70,000 in later and post-war years. During the depression of 1921–22, almost 600,000 children were having school meals, but the figure fell sharply in subsequent years. Following developments during the 1939–45 war the numbers increased and by 1957 45.9 *per cent.* of the children were taking dinners.

One of the most notable recent advances in the care of the handicapped has been the realization that disability in children must be detected in infancy or early childhood if maximum benefit is to be obtained from treatment, training and education. It has also come to be recognized that parents have a vital part in the early treatment and management of their handicapped child. Fifty years ago there were already about 300 special schools for handicapped children. By 1957 there were 772. But one of the striking trends in recent years has been the growing tendancy to keep handicapped children, wherever possible, in ordinary schools. More is also being done to advise parents on the management of their handicapped children, especially those with defective hearing or who are severely physically handicapped.

It is pointed out in the report that much research is proceeding into the causes of certain physical disabilities. In time the pattern for dealing with the physically handicapped may change as it has already done with several diseases.

Medical inspection and treatment

Special attention is given in the report to the important role of the school health visitors. It is pointed out that most of the

work of a nurse in the school health service is concerned with the problems and defects of school children. It has long been the policy of the central government departments that health visitors should work both in the local health and education authority services. Since there are far too few health visitors it is emphasized that it is a grievous waste of skill to employ them whole-time in clinics. In some areas, lay assistants are engaged for the less skilled work.

Many children are employed out of school hours although the total number is unknown. It is stressed as important that the effect of such employment on children's development and educational progress should be established and that the matter is one which should be studied locally by school medical officers.

Periodic medical inspection provides an excellent opportunity for the detection of defects but many supporters of the inspection in its present form claim that it provides an equally valuable opportunity for the practice of health education. This education is an important aspect of preventive medicine, and it is urged that it should be practised by school medical officer, school nurse, teacher, and all who work with school children.

There has been a remarkable development in the child guidance service particularly during the last 25 years. It is now realized that much ill-health, unhappiness and anti-social behaviour is psychological in origin, that it may respond to treatment, and that it may even be possible to prevent it. Greater emphasis is now being laid on preventive work in early childhood so as to reduce the amount of mental ill-health in adult life. A detailed account is given in the report of the work of the child guidance clinics. By 1957 the number had reached 340. Children arriving at the clinics tend to be mainly in the seven to 12 year range, though in recent years there has been some lowering within this range.

It is predicted in the report that measures for preventing emotional and behaviour disturbances, particularly those operating in childhood, will attract more interest and a larger share of resources. The activities of the child guidance service will always be limited, and more attention will be given to mental health in the anti-natal, child welfare and school health service.

The report also deals in detail with many other aspects of child health and will be very valuable to those primarily concerned as also to others who are interested in the wider aspects of public health. As Sir John Charles says, in his introduction, the work of the school health service has been one of many factors that have contributed to improved child health and reduced mortality in the past 50 years, but it has been work of first importance. The service must, however, adapt itself to the changing circumstances of the times: it must become more selective in its aims, giving more time to the problems and difficulties of individual children in school.

PENAL PRACTICE IN A CHANGING SOCIETY

THE HOUSE OF LORDS DEBATE

By J. W. Murray, Our Lobby Correspondent

The Lord Chancellor, Viscount Kilmuir, enlarged on the Government's proposals contained in the White Paper "Penal Practice in a Changing Society" during the Lords debate on crime and penal practice.

He said that there was no doubt virtual unanimity in the opinion that crime had increased, was increasing and should be diminished. But the problem could not simply be handed over to the Government to be solved by administrative or by legislative measures. It was one which affected society as a whole, not merely because society suffered in the persons and the purses of its members from the activities of criminals, but because society had a responsibility, corporate and individual, not merely for dealing with the problem of the treatment of the criminal after he had declared himself, but for dealing with the more difficult problem of preventing him from becoming a criminal in the first place.

So far as Government action was concerned, they had laid down in the White Paper a programme of major importance for the future which was designed to meet the problems with which crime confronted society. The programme covered the whole range of the problem of crime from the stimulation of researches into the causes and the treatment of crime to concrete proposals in terms of bricks and mortar for providing institutions suitable to the carrying out of the new methods which were being developed.

The White Paper indicated what had already been done and showed the fruits of some of the creative thinking which had taken place over the last two or three years. It contained proposals which would involve legislation for adjusting the treatment of young offenders in the light of the growing volume of crime committed by young people, and for increasing the scope of statutory after-care for adults. It indicated that inquiry was going on into such important features of the new measures introduced in 1948 as preventative detention. It indicated the importance which the Government attached to the working out of improved methods of classification and of training; and through that it went to the provision of better buildings and of a staff sufficient both in numbers and in quality for the forward-looking reformative type of work which they were increasingly being required to perform.

The picture which the crime statistics presented was of an increase in the amount of indictable crime by about one half between the beginning and the end of the war, followed in the subsequent 14 years by large and unexplained fluctuations, which brought the amount of indictable crime by the end of 1957 to a level about one-seventh above that of 1945. The disturbing fact was not so much the periodic steep increases in crime, which had been followed by equally steep decreases, as the fact that the ground lost during the war had never been recovered. They had also been disquieted by the persistent increase in crimes of violence against the person, and sexual offences, though the figures for the first three-quarters of 1958 showed, almost for the first time since the war, a decrease in the number of sexual offences known to the police. Offences of violence and sexual offences accounted for only 30,000 out of well over half-a-million crimes known to the police. Comparative smallness did not deal with a positive large figure, but the recent studies had shown that the crimes of violence consisted largely of offences arising out of brawls or family disputes, resulting in relatively minor injury, very often inflicted with the fists. Eighty-five *per cent.* of the crimes of violence were woundings; and of those, in turn, 90 *per cent.*, composing 76 *per cent.* of the total crimes of violence, were of the non-serious kind, while only nine *per cent.* of the crimes of violence were those associated with robbery and serious incidents of that kind.

They had to face the fact that the great bulk of crimes consisted of offences of dishonesty. In that respect, he believed the ordinary household could help by reducing the opportunities. The Government recognized that the small minority of offences against the person which resulted in serious injury might cause most grievous suffering, and the Home Secretary had appointed a Working Party of officials to study the problems which would be involved in compensating victims of those offences, on the analogy of payments made to the victims of industrial injury. The increase in crime among juveniles and young adults was a feature of the post-war trends in crime which gave rise to great anxiety, and it was a problem about which the Home Secretary had been particularly concerned.

They wanted to make progress in understanding the nature of the problems and also studying the effects of the measures they took to deal with it. Hence the great importance which they attached to research. Progress could not be measured simply in terms of the amount of Government money which was being spent, though even that had increased five-fold over the amounts

being spent two years ago. A wide-ranging programme of research was being undertaken by the Research Unit set up by the Home Secretary and the Secretary of State for Scotland and by a number of universities and other bodies with financial assistance from the Government, and by others without financial assistance but often in association with the Home Office or the Prison Commission. The Home Secretary had been particularly concerned in the plans which had been made, and which were now happily coming to fruition, for the creation of an Institute of Criminology at Cambridge. The Government had decided, on the advice of the University Grants Committee, to support the development of criminological studies in the University of Cambridge by making a grant over the next three years.

Dealing with the prison situation, the Lord Chancellor said it was unhappily true that in 1952 there were 6,000 men sleeping three in a cell, and that there were almost as many today. But today there were 2,000 more prisoners, so that without considerable activity there would have been 8,000 men sleeping three in a cell. To deal with that problem they had planned a forward building programme which was set out in part IV of the White Paper. It was the first time that such a programme had been published, and it was an indication of the Government's determination to grapple with the problem realistically. The expenditure proposed for the 1959–60 new prison building programme was about three times that for the past year.

Turning to the difficult problem concerning work for prisoners, he said that in the local prisons there were not enough workshops, the working hours were too short, there was not enough work to fill those hours and too much of the work was of low industrial quality. The short working hours were a result of the shortage of staff. The shortage of workshops was being remedied, and 16 additional shops were being provided this year, eight of which would be two-storeyed so that they could take two industries. The great need was for more work, of a simple kind which did not require much workshop space per man. It was necessary for such work to be simple, since approximately two-fifths of the population of local prisons were serving sentences of six months or less, and because there was no time to train those men to do any but the simplest work and many of them were mentally or physically incapable of performing skilled work. The problem would never be solved without the co-operation of those concerned outside the prisons—employers and trade unions alike.

The effective development of after-care was regarded by the Government as of primary importance. By a long and valuable tradition, that work had been based on a partnership between the State and voluntary social service. A most important change since the report of the Maxwell Committee was the appointment at local prisons of well-qualified social case workers known as prison welfare officers. Those officers served two purposes. First, they helped the prisoners during their sentence with their many social and domestic problems, and were thus able to establish a relation of confidence as non-authoritarian figures. Secondly, they selected those prisoners who were most likely to benefit from friendship and after-care after discharge and prepared case histories and constructive plans for their after-care.

Later in the debate, Lord Chesham, for the Government, dealt with the question of juvenile delinquency. He said that the figures for 1957 showed a continuance of the upward trend, which began in 1955, in the number of persons under 21 convicted or found guilty of offences. The rise was in both indictable and non-indictable offences, among both sexes, and in almost every annual age group under 21.

In the age group 17 to 21 the number of offenders had increased, although the population in that age group was slightly less than it had been in 1938. In that year, the number of persons of that group convicted per 100,000 was 767. By 1957, it was 1,555, an increase of more than 100 *per cent.*

The generation which was born in the years 1935–36 to 1941–42, and was aged between 17 and 21 in 1957, had shown throughout its career a higher degree of delinquency than its predecessors; but, in addition, it had produced in its late adolescent an amount of delinquency even higher than was expected from earlier records. A generation normally produced its peak of delinquency at the age of 14, and the fact that this generation had produced a further peak at 17 was a new factor.

The increase in the amount of delinquency in the years mentioned was partly due to the higher birth rate in the years from 1942 onwards. Even when allowance was made for the population bulge, however, there was still a marked increase in the number of children found guilty of some offences. Out of every 100,000 of the ages 14 to 17 in 1938, 1,131 were found guilty in that year. The corresponding figure for 1957 was 2,058, an increase of 85 *per cent.* With younger children there had been a similar rise, though not so steep. Out of every 100,000 between the ages of eight to 14, 798 were found guilty in 1938 and 1,091 in 1957, an increase of 36 *per cent.*

The wave of juvenile delinquency had fluctuated since the war at fairly regular intervals, rising to its highest peak in 1957, with lower peaks in 1944 and 1948, and particularly low troughs in 1954 and 1955. In general, things were really no worse and no better in 1957 than they were in 1951, though in one respect, *i.e.,* in the number of boys between 14 and 17 who had been found guilty of indictable offences, 1957 was the worst year since the war. No one could offer any good explanation of the ebb and flow, but they had to recognize that it existed, that the situation had been almost as bad before and that the tide might easily turn once more. There was no sign that it had turned yet, or that it soon would. The only comfort was the fact that children under the age of 14 had a better record at present than their predecessors, who were the ones who now caused so much anxiety as young adults.

The Government had no wish to underestimate the seriousness of the problem. They were anxious to make any necessary improvements in the system to deal with juvenile offenders, and they were waiting with interest to see what conclusions were reached by the departmental committee which was sitting under the chairmanship of Lord Ingleby. That committee had a long and difficult task, and he understood that it might be several months before it was able to submit its report.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Sellers and Ormerod, L.JJ.)

EASTBOURNE CORPORATION *v.* FORTES ICE CREAM PARLOUR (1955), LTD.

March 2, 3, 23, 1959

Town and Country Planning—Enforcement notice—Appeal against notice—Jurisdiction of justices to determine whether development has taken place—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 23 (4).

APPEAL from Divisional Court.

The appellants, Fortes Ice Cream Parlour (1955), Ltd., placed, without planning permission, an ice cream sales machine on the forecourt of their premises. An enforcement notice served on them requiring the removal of the machine was quashed on appeal by the justices under s. 23 (4) of the Town and Country Planning Act, 1947, on the ground that there was no development within the meaning of s. 12 of the Act of 1947. On appeal that decision was reversed by the Divisional Court on the ground that the justices had no power to inquire or determine whether there was a development. On appeal to the Court of Appeal,

Held: the magistrates' court had jurisdiction to determine whether the matters referred to in the enforcement notice as being development did or did not constitute development.

Appeal allowed.

Counsel: *Pennycuick, Q.C.,* and *J. D. James,* for the appellants; *Geoffrey Lawrence, Q.C.,* and *Boydell,* for the corporation.

Solicitors: *Clifford-Turner & Co.; Sharpe, Pritchard & Co., for Town Clerk,* Eastbourne.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

GUILDFORD RURAL DISTRICT COUNCIL *v.* PENNY AND ANOTHER

February 25, 26, 27, March 2, 23, 1959

Town and Country Planning—Development—Caravan site—Increase in number of caravans—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 12 (2).

APPEAL from Divisional Court.

Before July 1, 1948, one and a half acres of land were used as a caravan site for not more than eight caravans at a time. On June 18, 1956, the Minister of Housing and Local Government allowed the use of the site for 21 caravans. Later, the owners increased the number to 28, and the local authority served an enforcement notice on them to discontinue the use in excess of 21. On complaint by the

owners the justices quashed the notice on the ground that the increase in number did not constitute a material change of use of the land. On appeal by the local authority, the Divisional Court reversed the decision on the ground that the justices had no power to inquire whether there was a development. On appeal to the Court of Appeal,

Held: (applying the *Eastbourne* case, *supra*) the question whether the increase in number amounted to a development was one of fact for the justices to decide, and the courts could not interfere.

Appeal dismissed.

Counsel: *Megarry, Q.C.*, and *Marder* for the owners; *Nigel Bridge* for the local authority.

Solicitors: *Garber, Vowles & Co.; Jaques & Co.* for *Barlow, Norris & Jenkins*, Guildford.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Devlin, Donovan, McNair and Hinchcliffe, JJ.)

R. *v.* COOK

March 9, 23, 1959

Criminal Law—Evidence—Character of prisoner—Cross-examination on previous convictions—Imputation on character of Crown witness—Discretion of Judge—Criminal Evidence Act, 1898 (61 *and* 62 *Vict., c.* 36), *s.* 1, *proviso* (*f*) (ii).

APPEAL against conviction.

The appellant was convicted at Somerset quarter sessions of obtaining a motor car by false pretences and receiving five bankers' cheque forms, knowing them to have been stolen, and was sentenced to concurrent terms of four years' and three years' imprisonment. The witnesses for the prosecution included Det.-Con. Thomas, who stated in evidence that when the appellant was charged he said that he made out a cheque himself and admitted that he had got the car "on a dud cheque." Later, the appellant made a statement in writing in which he said that he found the cheque book in the road. The appellant, who conducted his case in person, in the course of his cross-examination of the detective constable suggested that the statements had been obtained from him by a threat that, if he did not speak, his wife would be charged. This was denied by the constable. The appellant later gave evidence himself and in the course of cross-examination repeated the allegation. Counsel for the prosecution then said that he wished to put "certain further questions." The chairman said that, while counsel was strictly entitled to do so, he himself would have thought it would not be necessary. Counsel then put to the appellant, and the appellant admitted, a number of previous convictions. The appellant appealed on the ground that the cross-examination was inadmissible.

Held: now that it was clearly established that the judge had a discretion whether to allow cross-examination of this kind or not, there was no need to strain the words of proviso (*f*) (ii) to s. 1 of the Criminal Evidence Act, 1898, "unless . . . the nature or conduct of the defence is such as to involve imputations on the character of . . . the witnesses for the prosecution," in the favour of the defence, as had been done by several authorities, and the words should now be given their natural meaning; applying these principles to the present case, the court was of opinion that there had been imputation on the character of the police officer within the meaning of the proviso, but the court were not satisfied that the chairman had exercised his discretion at all, because he thought that the prosecution were entitled to put the questions as of right, and no warning had been given to the appellant either by counsel or the chairman that he was going too far, and it was the inevitable practice that this should be done; in these circumstances the court might hold that the cross-examination was inadmissible, but, as they were of opinion that no substantial miscarriage of justice had arisen by reason of the irregularity, they would apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, and affirm the conviction.

Counsel: *N. R. Blaker*, for the appellant; *Inskip*, for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Fryer, Bennett & Deal*, Weston-super-Mare.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

COURTS-MARTIAL APPEAL COURT

(Before Lord Parker, C.J., Streatfeild and Hinchcliffe, JJ.)

R. *v.* SMITH

March 24, 25, 1959

Criminal Law—Evidence—Admissibility of statement—Alleged threat—Soldiers kept on parade by regimental sergeant-major till prisoner confessed—Subsequent confession to sergeant of special investigation branch—Dissipation of original threat.

APPEAL against conviction.

The appellant, Private Thomas Joseph Smith, of the King's Regiment, was convicted in Germany of the murder of Private David Creed, of the Gloucestershire Regiment, and sentenced to life imprisonment. The charge arose out of an incident on the night of April 13, 1958, between men of the King's Regiment and men of the Gloucestershire Regiment, who were then sharing barrack accommodation, during which three men of the Gloucestershire Regiment, including Private Creed, received stab wounds. The Judge-Advocate admitted evidence (i) of a confession by the appellant to the regimental sergeant-major of the King's Regiment, who stated that he called a late night parade soon after the incident, at which he said that he would keep the company on parade till someone admitted the stabbing, and that the appellant then stepped forward and said: "I did the stabbing"; (ii) of a subsequent confession by the appellant to a sergeant of the special investigation branch the following morning. The sergeant gave the appellant the usual caution and went on to refer to what had happened the night before and the appellant's admission to the sergeant-major, and the appellant replied: "Yes, I am not denying it. I stabbed three of them all right." Subsequently he made a written statement to the same effect.

Held: (i) that, though there was nothing improper in the action taken by the regimental sergeant-major, his conduct at the parade amounted to a threat, which rendered the appellant's first statement inadmissible, but, as the effect of any threat under which the first statement was made had been dissipated by the time when the appellant was interviewed by the sergeant of the special investigation branch, the oral and written statements made to him were admissible; (ii) if at the time of death the original wound was still an operating and substantial cause, then death could properly be said to be the result of the wound even if some other cause of death was also operating, and the summing-up on causation was adequate. The appeal, therefore, must be dismissed.

Counsel: *Bowen, Q.C.* and *Woolf*, for the appellant; *Garth Moore*, for the Crown.

Solicitors: *Registrar, Courts Martial Appeal Court*; *Director of Army Legal Services.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PERSONALIA

APPOINTMENTS

The Queen has appointed three new Judges of the High Court. They are Mr. Archie Pellow Marshall, Q.C., Mr. Henry Josceline Phillimore, Q.C., and Mr. Charles Rodger Noel Winn. The Lord Chancellor will assign Mr. Marshall and Mr. Phillimore to the Probate, Divorce and Admiralty Division and Mr. Winn to the Queen's Bench Division. Mr. Justice Arthian Davies has been transferred from the Probate, Divorce and Admiralty Division to the Queen's Bench Division.

Mr. Marshall was called to the bar in 1925 and joined the Midland circuit, practising at Birmingham from 1925 to 1947. In the latter year he took silk and became a Master of the Bench, Gray's Inn, in 1950. He has been recorder of Coventry since 1952 and was previously recorder of Warwick, and he has also been chairman of Cornwall quarter sessions since 1957. He is 59 years of age.

Mr. Phillimore was called to the bar in 1934. He took silk in 1952 and has been recorder of Winchester since 1954. In 1945 he was junior counsel at the Nuremberg trials. He is 48 years of age. Mr. Phillimore will be carrying on a long tradition, for his family has previously provided two distinguished Judges: his father's cousin, the first Lord Phillimore, who was Judge of the King's Bench Division and from 1913 to 1916 a Lord Justice of Appeal; and Lord Phillimore's father, the late Sir Robert Phillimore, who was the last Judge of the ancient High Court of Admiralty.

Mr. Winn has been junior counsel to the Treasury at common law since 1954. He was called to the bar in 1928 and became a bencher of the Inner Temple in 1953. He was formerly counsel to the G.P.O. at common law. He is 55 years of age.

Mr. Harry Trevor Heap, senior assistant solicitor to Salford county borough council, has been appointed deputy town clerk of Preston, with effect from June 12, next, on the retirement of Mr. John Whittle Harrison, the present holder of the post. Mr. Heap's previous appointments were as follows: assistant solicitor, borough of Lytham St. Annes (from October, 1947 to February, 1948); assistant solicitor, Newcastle-on-Tyne (from February, 1948 to June, 1949) and senior assistant solicitor, county borough of Salford, from June 1949. Mr. Harrison has held the post of deputy town clerk since April 1, 1945, and he retires after 45 years' service with Preston county borough in the town clerk's department.

ANNUAL REPORTS, ETC.

CITY OF CARLISLE: CHIEF CONSTABLE'S REPORT FOR 1958

During 1958 this force reduced by five, the difference between its actual strength (105) and its authorized establishment (115), and with a considerable reduction in absence due to sickness the chief constable must have found the task of carrying out the many duties expected of a modern police force less difficult than during 1957. Figures are given in the report for the average yearly sick absences per officer for 10 different forces. They vary from 7·55 days to 16·3, Carlisle's figure being 11·08. It would be interesting to know the reasons for these very considerable differences.

The recorded crimes totalled 812, 31 more than in 1957. 1954 and 1955 showed figures similar to 1958 with 814 and 823 respectively. Of the 812, 531 were detected, and 212 persons were prosecuted in consequence. Reports of the loss of pedal cycles involved the police in a considerable amount of work much of which could probably have been saved by the taking of reasonable precautions by the owners. There were 129 such reports, but in 84 of the cases the cycles were subsequently found abandoned or to have been taken by mistake or misplaced.

Non-indictable offences increased from 1,006 in 1957 to 1,156 in 1958. There was an increase of no less than 350 in the number of road traffic prosecutions, but this was offset by decreases in other classes of offences, particularly of 82 in intoxicating liquor law offences and of 95 in Weights and Measures Act offences.

Sixty-five juvenile offenders appeared before the court for indictable offences and the report comments on the temptation to youngsters offered by the practice of leaving money for the milkman in milk bottles on doorsteps, a practice which results, one assumes, from the fact that both parents are, or it may be the only person concerned is, at work when the milkman calls, and this is a convenient way of paying him. But human nature being what it is, it is a practice which certainly "asks for trouble."

DARTFORD RURAL DISTRICT COUNCIL ACCOUNTS, 1957–58

Dartford rural occupies 34,000 acres of the county of Kent. It has a growing population (latest figure exceeds 45,000); at March 31, 1958, rateable value per head was £11 4*s.* and a penny rate produced £2,070. It is thus one of the largest rural authorities and it is therefore all the more creditable that the clerk and financial officer, Mr. J. H. Milburn, A.I.M.T.A., F.R.V.A., D.P.A., has produced without printer's aid an excellent abstract of the council's finances.

A general rate of 17*s.* 6*d.* was levied, of which 14*s.* 8*d.* was precepted by Kent county council.

The rapid growth of the district has necessitated the provision of new office accommodation and during the year the council bought premises owned for hospital board purposes at Swanley for £42,000. Estimated cost of adaptations is £20,000.

Rent free weeks are given to tenants who are not in arrear with their payments. The year's transactions resulted in a surplus of £2,300 on the housing revenue account.

The council experienced certain difficulties in connexion with housing advances, the principal being the refusal of the Public Works Loans Board to meet the authority's loan requirements. As a result from September, 1956, the council have felt compelled to limit advances to persons who have a claim on the rural district; this in practice means those resident therein on July 1, 1945.

Because of the high cost of borrowing the council has very wisely met most of its capital requirements by temporary and short term loans. It is the practice to invest the superannuation fund internally.

At the close of the year the balance in hand on the general district revenue account totalled £19,200, a quite low figure almost wholly represented by stocks of materials and plant held.

MIDDLESBROUGH PROBATION REPORT

The year 1958 showed a considerable increase in the number of probation and supervision orders with which Mr. H. Leslie, senior probation officer, and the other probation officers of the county borough of Middlesbrough had to deal. The increase was in respect of 43 males and 36 females (this latter figure is over 100 *per cent.* greater than the previous years and the biggest increase is the age group 14-16 years). Most of the girls concerned were brought before the courts as in need of care or protection, a figure which has shown alarming increases during the past few years. The number under supervision or on licence from approved schools, borstals, and prisons shows a continuing increase and in view of certain changes in the after-care arrangements more ex-prisoners will in future come under the supervision of probation officers.

With the general increase in case loads there has been an inevitable increase in the number of inquiries conducted on behalf of courts and the highest percentage is shown against inquiries made on behalf of quarter sessions and Assize courts (130 *per cent.*).

Statistics having shown that the case loads of the officers had become too high the probation committee took steps to secure the appointment of an additional officer, but some difficulty arises from the fact that at the present time the supply of trained officers does not keep pace with the demand.

COUNTY BOROUGH OF BOOTLE: CHIEF CONSTABLE'S REPORT FOR 1958

An increase of two to 141 actual strength, leaving 10 vacancies, was the position in Bottle on December 31, 1958. When one considers police man power it is interesting to note the proportion of police to population. In Bootle it is one policeman to every 53,397 population. With this in mind it is easy to appreciate why the police are so anxious for the co-operation of the public in reporting suspicious incidents and in giving to the police any other information which may help in the prevention and detection of crime. The chief constable of Bootle emphasizes, as some of his colleagues have done in their reports, that it is for the police to judge whether the information is important and not for the public to refrain from giving it because to them it appears to be trivial.

The Bootle police do not confine their activities to crime prevention and other duties. Their team became champions of the Merseyside Police Forces Football League and won the Competition Cup.

Recorded crimes number 2,176, with 1,050 detected. The 1957 figures were 1,830 and 837 respectively, these two years being by far the worst in the past 10 years. The 1948 figures were 1,148 and 642. Breaking and entering contributed considerably to the 1958 increase with 628 such crimes compared with 495 in 1957, and larcenies of all kinds increased from 1,080 to 1,237.

The chief constable welcomes the interest shown by the local magistrates' court in the welfare of the victims of crime "instead of all the sympathy being lavished on the wrongdoer." He comments

that in his 30 years as a policeman he has all too often heard the victim comment: "I began to think I was the prisoner—bullied and badgered about and nothing for my trouble—it'll be a long time before I report anything to the police again." We fear that he is not the only policeman who has heard similar comments, sometimes only too fully justified.

There is a separate report on licensing matters. Of 18 comparable cities and towns Bootle has the highest number of inhabitants to each licensed house. Their figure is 1,259. The lowest such figure is that for Preston, 362.

WORCESTER PROBATION REPORT

In his report for 1958, Mr. Clifford Cooper, probation officer for the city of Worcester, shows that his case load has increased steadily for some years and is now a good deal greater than the national average. On December 31 last, the total number of cases under his supervision was 87. This figure includes 69 probation cases, the rest being after-care or fine supervision cases.

Cases completed satisfactorily in 1958 numbered 63·3 *per cent.* which is lower than in previous years. Mr. Cooper comments "it is disappointing to have to report a greater number of unsatisfactory probation cases this year. The increase in the number of cases under supervision, and the provision of increasing numbers of reports to the court, leaves all too little time for real case work. How far this is reflected in the less satisfactory figures is a matter for conjecture, but undoubtedly it is not conducive of the best results to be unable to give all the time necessary to supervision."

The value of borstal training is illustrated by the cases of two boys in respect of whom Mr. Cooper undertook after-care. They had undertaken vocational training courses in borstal and had gained good certificates, one in bread baking and one in bricklaying, and in both cases it was quite easy to secure good, well-paid employment for them.

Prison after-care also brings its rewards. One man, whose last sentence was four years, after five previous convictions, passed out of Mr. Cooper's care on January 1, 1958, but called on him on January 1, 1959 to wish him a happy new year and to remind him he had now been home two years and was still keeping out of trouble.

In her separate report, Mrs. K. E. Strangeman gives some interesting particulars of individual cases. As to matrimonial work, she says it continues to be heavy, but well worth while. Not all the cases are of a serious nature, however, often it happens that when a wife has talked over her difficulties with someone apart from the family knowing that it is in the strictest confidence, she begins to see matters in clearer perspective and is so helped to solve the difficulties.

BERKSHIRE BUDGET, 1956–60

Due to re-rating of industrial hereditaments and the revised rating provisions of the electricity industry the Berkshire penny rate is estimated to increase by £1,800 to £20,300 and it has therefore been possible to reduce the rate precept for 1959–60 by 6*d.* to 12*s.* 11*d.* Domestic and other non-industrial ratepayers will benefit in real terms immediately, and while they must look forward to further increases of rate-borne expenditure there are important mitigating factors also: the revaluation has been postponed until 1963 and county districts losing under the 1958 Act will not suffer any serious loss for two years at least.

The budget statement has been prepared in the usual clear and concise way by county treasurer W. S. Hardacre, F.I.M.T.A., A.S.A.A., and Alderman Maj.-Gen. D. M. W. Beak, V.C., D.S.O., M.C., as chairman has submitted his finance committee's report summarizing requirements and sources of income. A review of the estimates originally submitted by spending committees was made resulting in reductions of £64,000 gross.

The county council has decided to finance capital expenditure from revenue up to a rate of 6*d.*

Gross expenditure is estimated to rise by 25 *per cent.* to £10,400,000. Half of this rise is accounted for by increased education expenditure a factor which will be common to all education authorities. The other main reason is a large increase in agency road work (including £1,300,000 on new trunk roads) the cost of which is reimbursed by the Ministry of Transport.

It is always interesting to compare the views of different authorities on the size of the balances they should hold. It is often the case that the smaller the authority the larger is the relative balance retained. Berkshire have modest ideas on this subject and think £180,000 will be sufficient for their needs in 1959–60.

Capital expenditure is estimated at £2,200,000 (£1,500,000 for education). It includes £102,000 for house loans. The schemes now put forward, plus others previously approved, will require an additional £3¾ million in years subsequent to 1959–60: to this will have to be added the cost of new schemes still to come.

CITY OF LEICESTER: CHIEF CONSTABLE'S REPORT FOR 1958

From this report and that of the watch committee it appears that the authorized establishment of this force was increased by 15 on October 21, 1958 to a total of 465. During 1958, the net increase in actual strength was 32, and at the end of the year the force was 46 short of its new establishment. The special constabulary has been reorganized and it is the intention to make wider use "of this valuable reserve on both preventive and specialist police duties." It has been decided that the expenditure of public money on the special constabulary band cannot be justified and the association between the special constabulary and the band ended from Good Friday, 1959.

The 1958 total of 3,276 indictable offences shows an increase of 468 on 1957's, minor and certain other kinds of petty larceny accounting for a great proportion of this increase. The chief constable's comment on this is that it is surprising when there is less real poverty in Leicester than ever before, and he suggests that growing carelessness by property owners may be partly responsible. Certainly it is the citizen's duty to take all due care of his property and not to expect police activity to make good his own neglect.

In March, a night crime patrol was introduced and this has lessened delay in specialized investigation of complaints of crime. It should lead, one would think, to increased detection of crimes committed because the sooner investigations begin the hotter the trail should be.

There is a particularly high proportion of vehicles to population in Leicester and police activity in bringing to book offenders against the traffic laws has increased. In 1958 the total of prosecutions and cautions for obstruction and for contravention of no waiting and unilateral waiting orders was 2,123; the 1957 total was 1,609 and that for 1956 was 1,077. Similarly careless driving and speed limit prosecutions showed increases. The 1958 figures were 445 and 766 respectively; those for 1957 were 394 and 503 and those for 1956 were 289 and 232.

An increase from 14 in 1957 to 87 in 1958 in prosecutions for soliciting for immoral purposes is thought to be due rather to increased police attention given to this offence than to an actual increase in the number of offences committed.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Section 6 of the Criminal Justice Act, 1948, outlines the powers of courts when a breach of requirement of a probation order has been committed, and excludes specifically (subs. 6) the commission of a further offence committed during a period of probation, which is dealt with by s. 8 of the same Act.

The words "breach of the probation order" which appear repeatedly in the judgment delivered by the Lord Chief Justice in the case of *R.* v. *Evans* (1959) 123 J.P. 128, when obviously dealing with the commission of further offences during probation, do nothing to ease the task of those whose duty it is to explain to justices the real distinction which exists between the two sections.

The commission of a further offence during a period of probation is too often included in the general term "a breach," and although perhaps conversationally convenient, is quite incorrect, and tends to confusion.

GEVENO.

[We entirely agree with our correspondent and we dealt with this very point in P.P.s at 122 J.P.N. 524 and 709. The distinction between the two sections is absolutely vital and the general term "a breach" is an unfortunate legacy from pre-1948 days.—*Ed., J.P. and L.G.R.*]

NOTICES

A special university lecture in laws on Parliamentary Privilege by the Rt. Hon. Lord Kilmuir, P.C., G.C.V.O., Lord High Chancellor of Great Britain will be given at King's College, Strand, W.C.2, at 5 *p.m.* on Monday, May 4, 1959. The chair will be taken by Professor F. R. Crane, LL.B., Professor of English Law in the University of London. The lecture is addressed to students of the University and to others interested in the subject. Admission is free, without ticket.

THE MILKY WAY

There have been a number of prosecutions, in the past few months, against itinerant vendors of foodstuffs (principally ice-cream) for signalizing their approach to the public by using "a noisy instrument," contrary to the terms of some local bye-law (*see*, for example, *ante*, p. 62). Some of these cases have led to appeals in the Divisional Court, where ingenious arguments have been heard on the theme that an instrument which can properly be preceded by the epithet "musical" cannot, at the same time, be described as "noisy"—an argument which has not found favour with their Lordships. Though the decision is now, we suppose, a matter of law, few people would dissent from it on the question of taste. There are composers whose works, while being "musical" in the accepted sense, seem "noisy" to the ear of the non-specialist. Without entering upon the contraversies surrounding twentieth century names like Bartok, Shostakovitch, Honegger and Hindemith, we suppose that it would not be unfair to describe some passages in the compositions of Hector Berlioz and Richard Wagner (to mention only two celebrities of the nineteenth century) as "noisy," despite these composers' mastery of the principles of orchestration. There are others, like Felix Mendelssohn and Robert Schumann, whose instrumentation is mellifluous and sweet in itself, but can be made to sound raucous by unskilled megaphonic reproduction.

Noise, in the ordinary sense of an excessively loud assault upon the aural nerves, is very much of a problem at the present day; and the ordinary citizen should be grateful to the local authorities whose byelaws have endeavoured to reduce its frequency and volume, and to the Magistrates and Judges who have not hesitated to enforce the appropriate penalties against offenders. On the other hand, a recent training course held at Leamington Spa by the National Dairymen's Association gives the impression that the trend has gone far enough. There was a time when the milkman's arrival on the doorstep was notified by the melodious cry of "Milk-o." This has now fallen into disuse; but the opinion expressed at the conference (according to *The Times*) was that "the silent vehicle, coming and going so stealthily, and the shy, self-effacing manner of most milkmen," are hindrances to salesmanship. Not that any speaker advocated "noisy" methods of drawing attention to their approach. With a brief side-glance at the recent cases, one speaker ventured the view that, "while the milkman's progress need not be heralded by Mendelssohn's *Spring Song* on an electric gong, a gentle 'rat-tat' on the door would please customers." There would be nothing new in the association between such gentle sounds and the activities of the dairy. The speaker, perhaps, was expressing a nostalgic longing for the idealized sounds and scenes of seventeenth century Arcadian England, celebrated in John Milton's *L'Allegro*:

> "While the ploughman, near at hand,
> Whistles o'er the furrowed land;
> *And the milkmaid singeth blithe,*
> And the mower whets his scythe;
> And every shepherd tells his tale
> Under the hawthorn in the dale."

All this sounds very sociable and cheerful; but in modern life, for all its boisterousness, "a simple survey showed that only one housewife in three saw the milkman more than once a week." Tape-recordings of house-to-house incidents were used to illustrate right and wrong sales methods; "doorstep psychology should go beyond the neat and clean appearance, the cheerful smile and *politesse* . . . apt comments on birthdays, visitors, school holidays, ailing members of the household, including cats and dogs, will lead to increased sales."

We have referred above to the authority of Milton. Even a writer so far removed from him, in outlook and style, as A. A. Milne agrees on the importance of urbanity in all matters pertaining to the dairy. Consider, for instance, the poem *The King's Breakfast* in *When We Were Very Young*:

> "The King asked the Queen and
> The Queen asked the Dairymaid:
> 'Could we have some butter for
> The Royal slice of bread?'"

The sequel is too long for extensive quotation, but we remember that the Dairymaid uttered soothing noises and went off "to ask the Alderney before she went to bed." That aristocratic animal was happy to supply both "milk for his porringer and butter for his bread"; with the result that the poor distracted Queen was able, next morning, to satisfy his Majesty's fondest wish.

Noblesse oblige: those of exalted lineage can always be relied upon to do their part. That is why pedigree is so highly thought of; and that, again, is the background to the carrying of the recent appeal, in *Islip Pedigree Breeding Centre* v. *Abercromby and Another*, from the Second Division of the Scottish Court of Session to the House of Lords. The claim was for breach of contract, in that the respondents, having sold the appellants a particular Aberdeen-Angus pedigree cow, delivered a different, and most ordinary, animal.

In September, 1954, nine cows were collected from the respondents' farm and brought to Islip. One of these (it was believed) bore the distinguished patronymic "Evolvira of Banks"; and should have been earmarked "T.28." The mark could not at that time be clearly read; but in January, 1955, it was examined in a strong light, and found to read 'T.34." This unfortunate beast died, suddenly, the following March.

The question therefore resolved itself into one of identity—that is, in the words of Lord Tucker, it depended entirely on findings of fact. His Lordship reviewed the evidence and came to the conclusion that, the alternative explanations being highly improbable, there must have been two cows, both marked "T.34." Lord Keith, agreeing that the appeal should be allowed used the following memorable words:—

> "There has been much speculation about what has happened to 'T.28,' if she even existed with that number. To determine her fate is not, to my mind, essential to the issue. What is certain is that, if she still exists, she can hardly dare to lift her head again and come into the light of day after this case. Her days as an ancestress of a further line of pedigree Aberdeen-Angus cattle are numbered. A reasonable guess may be hazarded that she is dead. When she died, and how she died, may also be a mystery."

This tragedy will not detract from the importance of good breeding in bovine circles, nor (we hope) will it discourage the implementation of the new methods of salesmanship for dairy-produce adumbrated at the Leamington conference. And now that those new methods have been, as it were, noised abroad, it is to be expected that they will be adopted without bringing the milkman's vocation into conflict with the byelaws which have been recently tested in the Courts.

A.L.P.

NOW TURN TO PAGE 1

Where a court, being satisfied that the accused has committed the offence charged, remands him for medical examination and report, the remand shall not be for more than three weeks at a time. (Magistrates' Courts Act, 1952, s. 26.)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Landlord and Tenant—*Rent—Condition authorizing unilateral variation.*

At 122 J.P.N. 715 there is an article entitled "Council House Tenancies" in which I am much interested. One point in the article is the suggestion that the council might have introduced a "condition of the tenancy enabling it at any time to increase or decrease the rent for any reason whatsoever, or otherwise vary the conditions of the tenancy, by giving the tenant not less than seven days' written notice thereof."

I should be interested to know what authority there is for the enforceabiiity of such a condition; perhaps you have some correspondence on the matter ?

DATHO.

Answer.

The suggestion occurred (not as something which could certainly be done but) as something which if attempted might raise an interesting argument, in an article signed by a legally qualified contributor. We were therefore not ourselves committed to it. To answer first the last sentence of the present query: in the three months which have elapsed we have not had correspondence arising out of our contributor's suggestion. This may be because, by pure coincidence, our own opinion was given the next week, answering P.P. 5 at 740. Rent must be money or money's worth, of a value initially determined, or agreed to be subsequently determined by some ascertainable fact or occurrence. We do not therefore consider that such a condition would be enforceable, but interesting questions could still be mooted, about the position of the parties if a tenant had accepted a lease purporting to embody such a condition.

2.—Licensing—*"Supper-hour" extension—Closing of bar.*

In your answer to questions regarding the above matter you have made it clear that the restrictions in s. 104 (4) (*a*) and (*b*), Licensing Act, 1953, do not over-ride the saving in s. 100 (2) (*a*) concerning residents.

With regard to s. 104 (4) (*c*) of the Act, I shall be obliged if you will let me know whether or not you agree that during the "supper-hour" the only legal way of supplying residents is to have drinks served to them in a lounge or other place which is not a bar.

NOLOR.

Answer.

Section 104 (4) (*c*) of the Licensing Act, 1953, requires that during the "supper-hour" extension of one hour following the end of permitted hours in the evening any bar in the licensed premises shall be closed: "bar" is defined in s. 165 of the Act so as to include any place exclusively or mainly used for the sale and consumption of intoxicating liquor. It seems, therefore, that we need not be too hesitant in agreeing with our correspondent.

But other questions relating to s. 104 of the Act have been before magistrates' courts and have demonstrated a willingness to be somewhat liberal in the interpretation of some of the terms used in the section, and the High Court has upheld this liberality: *see Solomon* v. *Green* (1955) 119 J.P. 289.

Although the point has never been decided, we incline to the view that if a magistrates' court were to hold that a bar "closed" at the moment at which it ceased to be open to the public at large notwithstanding that residents continued to use it, the High Court would uphold this decision.

3.—Magistrates—*Jurisdiction and powers—Indecent assault upon child—Summary trial time limit—Proceedings for summary trial begun before lapse of time noticed—Subsequent committal for trial.*

On Monday last, an adult was charged before the justices with an offence under s. 14 of the Sexual Offences Act, 1956, namely, an indecent assault on a girl of 14 years. The defendant appeared with solicitor and rejected trial by jury and elected summary trial by the justices and pleaded "not guilty." Evidence was then given by the girl's mother, simply as to identification and age of her daughter. Thereupon, the girl was called and sworn, and it was only then that, having heard part of her evidence, it came to my notice that the information had not been laid until more than six months after the alleged offence.

I thereupon advised the justices that they had no jurisdiction to continue summary proceedings, but that they may well have the right to continue and, if satisfied of a *prima facie* case, commit the defendant for trial, or adjourn the proceedings to enable all concerned to take advice and later commence proceedings by way of inquiry with a view to committal for trial at a later date. I understand that defending solicitor will later submit that having embarked on summary trial, the justices must continue summary trial.

IMINGA.

Answer.

It is clear that s. 14 (3) of the Children and Young Persons Act, 1933, prohibits the summary trial of an indecent assault on a child or young person, which was not committed within the six months before the information was laid.

Section 24 of the Magistrates' Courts Act, 1952, prohibits justices (with one exception) from inquiring into an information for an indictable offence as examining justices after they have begun to try that information summarily; but in our view this must mean after they have begun *lawfully* to try that information summarily. In this case the proceedings for summary trial were a nullity, as the justices had no such jurisdiction, and we think that they were entitled to ignore those proceedings and had jurisdiction to proceed as examining justices (*cf. R.* v. *Greenhoe JJ., ex parte Director of Public Prosecutions* (1950) 114 J.P. 312; [1950] 2 All E.R. 42).

4.—Magistrates—*Practice and procedure—Magistrates' Courts Act, 1957—Mitigating circumstances—Use of a sheet of paper other than the form sent to the defendant.*

When it is intended that a person shall be proceeded against under the Magistrates' Courts Act of 1957, and the necessary documents are duly served upon him in conformity with this new procedure, *viz.*, summons, statement of facts, notice of previous convictions (if any), notice of explanation of the procedure and form to be filled in by the defendant in mitigation or explanation; in some cases it has been experienced that the defendant has either mislaid or not availed himself of the printed mitigation form, in his reply to the court.

Does that mean, therefore, that just because a person fails to use the printed form served along with the other documents under the Magistrates' Courts Act, 1957, then the new procedure cannot be adopted, and the case has to be dealt with, as before this Act was introduced.

It would hardly seem fair, to either the defendant or prosecutor, that, for example, the defendant, although he is quite prepared to accept proceedings under the Magistrates' Courts Act, 1957, mislays the printed mitigation form, and writes his explanation to the justices on ordinary note-paper, he loses his right to have the case dealt with, with the minimum of expense and inconvenience that would normally be available to himself and the court.

I cannot see anywhere in the Act that rules that where a person uses note-paper other than the printed form, on which to make his statement to the court in his absence, that the 1957 Act procedure cannot be duly adopted. I make special reference to s. 1 (2) (ii) of the Act itself.

JEESO.

Answer.

The last sentence of the first paragraph of form I in the schedule to the Act of 1957 is "A form which you can use for writing to the clerk is enclosed." In our view this cannot mean that the defendant must use this piece of paper and no other, and we have no doubt that he may write his mitigating circumstances on any sheet of paper, which he finds it convenient to use.

5.—Magistrates—*Practice and procedure—Two justices sitting—Submission by defence on a point of law—Justices divided—Power to adjourn.*

The two defendants, boys aged 13 and 14, for whom we appeared were jointly charged with committing malicious damage under s. 14 (1) of the Criminal Justice Administration Act, 1914. The only evidence to connect either boy with the damage consisted of certain admissions said to have been made to the police officer concerned in the case. The point was taken by the defence that this evidence was inadmissible as no caution was made at the time when it should have been made and further that the admissions were obtained as a result of interrogation whilst in police custody.

Without calling any evidence the defence submitted that the police evidence was inadmissible and if this were so then there was no evidence at all against the two defendants. The bench comprised two magistrates only and after consideration the clerk announced that the magistrates could not agree and that the case would be re-tried before a different court.

The defence submission was purely one of law *i.e.* as to admissibility of the police evidence, and it is indisputable that the alleged admissions to the police was the only evidence connecting the boys with the damage.

Power to order a re-trial when not satisfied as to guilt is well known but is there also power to order a re-trial when the court cannot make up its mind about the law?

Your views as to this would be appreciated together with your views as to the present remedy of the two defendants. LEWIN.

Answer.

We know of no authority for distinguishing in such a case between a failure by the justices to agree on the facts and their failure to agree on a matter of law. In either case they are entitled to adjourn the hearing so that the case can come before another bench.

The defendants' only method of challenging the decision to adjourn the hearing would by an application to the High Court for an order of prohibition to prevent the new court from proceeding to re-hear the case, but we think it unlikely that any such application would be successful.

6.—Market—*Trade refuse collection.*

By a local Act the corporation was authorized to hold markets in the borough, and to charge stallage. By an amending Act the markets in the borough were deemed to be markets provided under the Public Health Act, 1875. The market is held on part of the highway. The council have made byelaws "for regulating the use of the market place and the stalls therein and for preventing nuisances," etc.

One byelaw requires stall-holders to place refuse in receptacles in close proximity to the stalls, and to cause the contents to be removed from time to time to a place outside the market. The practice is for the council to collect this refuse, and dispose of it at their own expense. The refuse appears to be "trade refuse" within the terms of s. 73 of the Public Health Act, 1936.

Your opinion is therefore sought as to whether:

(*a*) The council as owners of the market are obliged to do this gratuitously (*see Draper* v. *Sperring* (1861) 4 L.T. 365); or

(*b*) whether the council may agree "reasonable charges" with the stall-holders for the removal of this refuse. A. MICHAEL.

Answer.

(*a*) The decision cited shows that the owner of a market must not allow it to become a public nuisance, but where the market rights belong to a local authority we see no legal objection to their making a byelaw to the effect mentioned in the second paragraph of the query. The practical question arises, where are the stall-holders to put the refuse, outside the market? It is perhaps for this reason that the present model byelaw requires the refuse to be put in receptacles provided by the council, which presumably the council will empty.

(*b*) We think not. Section 73 gives power to recover from occupiers of premises, which the stall-holders are not. We regard the cost as part of the expense of maintenance, and which should be covered by tolls, market rents, and stallages.

7.—Mortgage—*Attornment clause—Housing (Financial Provisions) Act,* 1958, *s.* 43—*Proceedings for possession.*

My council makes advances to house purchasers under s. 43 of the above Act (re-enacting s. 4 of the Housing Act, 1949) and it is occasionally necessary to obtain possession of a property before exercising the statutory power of sale to enforce the corporation's security. The procedure for recovery of possession provided by the Small Tenements Recovery Act, 1838, is available in cases of advances made under the Small Dwellings Acquisition Acts, 1899–1923 (by express provision in the latter Acts) but the Act of 1958 contains no like provisions, so that possession proceedings must be brought either in the county court or the High Court. Since procedure under the Act of 1838 is less expensive (not only to the mortgagee but to the mortgagor), and is simple and speedy as compared with the county court procedure, my council are considering the incorporation of an attornment clause, the tenancy thereby created to be at a notional and nominal rent which would be included in and deemed satisfied by the payment of principal and interest: *Dudley and District Benefit Building Society* v. *Gordon* (1929) 93 J.P. 196.

It seems, however, that there may be difficulties in so far as the jurisdiction of the magistrates' court is concerned, having regard to the maximum rent permissible under s. 1 of the Act of 1838. Whilst the notional and nominal rent referred to above would not exceed the £20 *per annum* maximum rent prescribed by s. 1, it appears that where the rent is notional only the court may then look at the net annual value of the property as a basis for determining whether or not it has jurisdiction—at any rate the net annual value was "found" by the court in the case of *Dudley and District Benefit Building Society* v. *Gordon, supra.*

I can find no clear authority to support this proposition but were the net annual value to be regarded as the basis of jurisdiction the attornment clause would be virtually useless. It is noted that in *Alliance Building Society* v. *Pinwill* [1958] 2 All E.R. 408, the attornment clause provided for the payment by the mortgagor of "the yearly rent of a peppercorn if demanded."

The remarks of Danckwerts, J., in *Steyning etc. Building Society* v. *Wilson* [1951] 2 All E.R. 452 may indicate that the courts regard attornment clauses with disfavour (but do not appear to challenge their validity), but these remarks do not appear to be relevant in the present case where, for the reasons mentioned earlier, it is submitted that a useful purpose would be served by the inclusion of the clause.

Your opinion is therefore sought as to whether:

(*a*) there is any legal objection to the incorporation of such an attornment clause in a mortgage deed securing an advance under the Housing (Financial Provisions) Act, 1958;

(*b*) if the answer to (*a*) is in the affirmative, the insertion of such a clause would be equally as effective if inserted in a legal charge as opposed to a mortgage by demise; and

(*c*) it is permissible to fix a purely notional rent in such an attornment clause and if so would this rent or the net annual value become the value governing jurisdiction of the court for the purposes of the £20 *per annum* maximum rent prescribed by s. 1 of the Small Tenements Recovery Act, 1838?

(*d*) Generally. PORTA MARIS.

Answer.

(*a*) No, in our opinion.

(*b*) This does not arise on the query as put to us (doubts have been expressed about the point: *e.g.* at 13 Conv. N.S. (1949), p. 31. We have not found an authoritative decision).

(*c*) Yes. The nominal rent would be the rent for the purposes of the Act of 1838.

(*d*) We have nothing to add, except that Danckwerts, J., was addressing himself to a different matter in *Steyning and Littlehampton Building Society* v. *Wilson, supra.*

8.—Real Property—*Sale by local authority—Dispensing with conveyance—Solicitors Act*, 1957, *s.* 20.

Under s. 104 of the Housing Act, 1957, a local authority may sell council houses either subject to mortgage or by instalments. Since it was decided in *Beeston and Stapleford Urban District Council* v. *Smith* (1949) 113 J.P. 160; [1949] 1 All E.R. 394, that the clerk of a local authority cannot be held to be a public officer within the meaning of what is now s. 20 of the Solicitors Act, 1957, I should like to know whether in your opinion:

(*a*) Such a contract would be regarded as an "instrument relating to real or personal estate" within the meaning of the section;

(*b*) The preparation of such a contract, if under seal, would expose a paid but unqualified clerk to the penalty provided by the section, notwithstanding that he was not specially paid for the preparation of the contract and that no charge was made to the house purchaser in respect thereof; and

(c) It would be in any way disadvantageous either to the council or to the purchaser if the contract took the form of an agreement under hand only, which is specifically excluded from the definition of "instrument" under s. 20 and which would presumably attract a stamp duty of only 6*d*. BONBON.

Answer.

(*a*) Yes.

(*b*) Yes.

(*c*) Were this possible, it would in our opinion be unfair to the purchaser, who ought to receive a proper document of title. But it is not possible. Apart from the rule of law that contracts of a corporate body must, with certain exceptions not here relevant, be executed under seal, the decision in *Kushner* v. *Law Society* (1952) 116 J.P. 132; [1952] 1 All E.R. 404, was directed to the very point, that the Stamp Act, 1891, and s. 20 of the Solicitors Act, 1957, cannot be evaded by failing to comply with s. 52 of the Law of Property Act, 1925, which requires conveyances to be made by deed.

9.—Road Traffic Acts—*Autrefois convict—"No waiting" area offence and causing unnecessary obstruction offence based on same facts.*

Recently in this court, a man was charged with (*a*) leaving his motor car in a "no waiting" area, and (*b*) with causing an unnecessary obstruction with his car. The evidence showed he left his vehicle at this spot for eight minutes.

He was represented before the justices and the two charges were taken separately, and after being convicted of the first charge, counsel put in a plea on behalf of the defendant of *autrefois convict* arguing that both cases were for substantially the same offence arising from the same act (the evidence was the same in both cases). Counsel referred to the case of *Solomon* v. *Durbridge* (1956) 120 J.P. 231 which refers to obstruction.

Would you please let me have your opinion as to whether the two charges mentioned above relate to the same offence or do you consider the defendant could properly be convicted of both charges.

KESOM.

Answer.

Our view is that in the ordinary case where a car is left for a short period in a "no waiting" area the appropriate charge is one of contravening those provisions. We do not think that an additional conviction for causing unnecessary obstruction can be justified unless there is evidence, over and above that which supports the first charge, either that actual obstruction was in fact caused or that the car was left for such a long time as to bring the case within *Solomon* v. *Durbridge*, *supra*.

10.—Road Traffic Acts—*Insurance covering driving by insured of vehicles other than the one he owns—Sale of that vehicle—Validity of policy thereafter to cover driving by him of another vehicle not owned by him.*

A owned a motor cycle and held a certificate of insurance on that vehicle, which covered him also whilst driving a motor cycle of another person. He disposes of his motor cycle and retains the certificate of insurance and does not tell his insurers of the sale of the insured motor cycle. He is subsequently detected driving the motor cycle of B (which was not the insured vehicle) which is insured by B for his own use only. A's certificate of insurance is still valid so far as dates are concerned and he contends it covers his driving of the motor cycle of another.

In your answer to P.P. 9 at 114 J.P.N. 685 you referred to the case of *Peters* v. *General Accident Corp. Ltd.* [1938] 2 All E.R. 267 but this case is not wholly in point and you expressed the opinion that the insurance of A was still operative.

The case of *Tattersall* v. *Drysdale* [1935] 2 K.B. 174 appears to clarify this matter. It was held, "that, where in a motor insurance policy a particular car is specified as the subject of insurance, and by a clause in the policy its benefits are extended to the assured when driving another car, the interest of the assured ceases when he parts with the specified car, and the extending clause falls together with the rest of the policy." This case followed *Rogerson* v. *Scottish Automobile & General Ins. Co.* (1930) 47 T.L.R. 46. K. YOR.

Answer.

We agree that the case of *Tattersall* v. *Drysdale*, *supra*, is conclusive on this point and we regret that we overlooked it when answering the P.P. at 114 J.P.N. 685.

11.—Road Traffic Acts—*Insurance—Man driving car allows 16 year old passenger to drive—Man "using" the car while the boy is driving.*

A man, X, is driving a motor car and has in the car with him a 16 year old boy. He, X, lets the boy drive the car while he (X) is the passenger, and while this is taking place the car is stopped by the police.

In addition to driving when under age the boy also drives when not being covered against third party risks. The insurance offence is based on his not being the holder of, nor having ever held, a driving licence.

I contend that although X is covered by insurance when he is driving the car himself, he is actually *using* without insurance when he is a passenger in the car driven by the 16 year old boy. It is argued here that in the circumstances X is "permitting" and *not* "using" without insurance.

In the above circumstances do you consider that in the event of the word "using" being in the information and not "permit" this would be a bar to a conviction under s. 35, Road Traffic Act, 1930.

J. GUNNER.

Answer.

We agree with our correspondent that in the circumstances stated X is using the vehicle while it is being driven by the boy, in the same manner as if the boy were his paid chaffeur. We assume that there is the usual clause in the policy requiring that the driver must hold or have held a driving licence and not be disqualified for holding one.

12.—Road Traffic Acts—*Lime spreader—Three and a half ton lorry used to take lime to fields and spread it—Regulation of driver's hours of work by s.* 19 *of the Act of* 1930.

A man was stopped on a road whilst driving a 3½ *ton* lime spreader lorry, which is used solely to take lime to the fields and spread it. When the records of work were examined it was found that the driver started work at 7 *a.m.*, had a break at 12 noon to 12.20 *p.m.*, and had then ceased work at 8 *p.m.* This occurred on a number of days and he was reported for working more than 5½ hours continuously under s. 19 (1) and (4), Road Traffic Act, 1930.

Opinion here differs as to whether this vehicle could be classed as being used solely for agricultural purposes and therefore could be got round in that fashion. I. THOPAT.

Answer.

We do not think that this vehicle is being used solely for agricultural purposes, but as we interpret s. 19 (2) (*c*) of the Act of 1930 any time spent by the driver on the vehicle, while it is being used in the course of spreading lime on a field (an operation of agriculture), does not count for the purposes of s. 19. Unless, therefore, the driver's hours spent driving the vehicle on the road in themselves contravene s. 19, we do not think that any offence has been committed.

13.—Small Dwellings Acquisition Act, 1899—*Transfer of property—Guarantee by mortgagor.*

The council made an advance under the provisions of these Acts. The amount of the advance was £2,286. At this date there is still outstanding £2,007 principal. The council have received a request from the mortgagor in which he states "I am desirous of transferring this property to my wife by deed of gift." The mortgagor and his wife live together, and if the deed of gift were executed the statutory condition as to the residence of the proprietor would not be affected. The mortgagor further states "I am prepared to stand as guarantor to my wife." So far as is known the wife has no separate income, and in view of the large amount of principal still outstanding it seems desirable, in the council's interests, that some form of guarantee should be taken from the husband. That the suggested transfer of the husband's interest may be approved appears to be clear from s. 3 (2) of the Act of 1899. The Acts do not seem, however, to make specific provision for guarantees in relation to advances made thereunder and, whilst there appears to be neither a legal nor a technical objection to this borrower's proposals, I shall be grateful if you will indicate whether in your opinion there is any objection to the course suggested.

PARLON.

Answer.

We see no objection to the giving and taking of the guarantee offered by the mortgagor.